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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 JOHN WESLEY HORN,

9 Petitioner,

10 v.

11 MAGGIE MILLER-STOUT,

12 Respondent.

CASE NO. C11-5055BHS

ORDER ADOPTING IN PART  
AND DECLINING TO ADOPT IN  
PART REPORT AND  
RECOMMENDATION


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14 This matter comes before the Court on the Report and Recommendation (“R&R”) of  
15 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 4). The Court has  
16 considered the R&R and the remaining record and hereby adopts in part and declines to  
17 adopt in part the R&R (Dkt. 4) for the reasons stated herein.

18 On January 18, 2011, Petitioner John Wesley Horn (“Horn”) filed a motion to  
19 proceed in forma pauperis in proceeding with his petition for writ of habeas corpus pursuant  
20 to 28 U.S.C. § 2254. Dkt. 1. On February 3, 2011, the magistrate judge issued the R&R  
21 recommending that Horn’s motion be denied for failure to complete a proper affidavit of  
22 indigence and that Horn should be required to pay the full filing fee. Dkt. 4. On February  
23 14, 2011, Horn paid the filing fee. On February 16, 2011, Horn filed objections to the R&R  
24 stating that his filing fee was paid but that the Court should not deny his motion to proceed  
25 in forma pauperis because other issues of indigency could arise such as his need for counsel.  
26 Dkt. 7.

1 The Court declines to adopt the R&R since it is moot with respect to the filing fee as  
2 it has been paid in full and adopts the R&R with respect to denial of Horn's motion to  
3 proceed in forma pauperis as Horn may seek relief regarding any further issues concerning  
4 indigency at the time they arise.

5 Therefore, the Court adopts in part and declines to adopt in part the R&R (Dkt. 4) as  
6 stated herein.

7 DATED this 28th day of March, 2011.

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11 BENJAMIN H. SETTLE  
12 United States District Judge  
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